

IN THE MATTER OF
**THOMAS DRAKE AND
KIMBERLEE DRAKE**

Petitioners

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 09-013V

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DECISION AND ORDER

On June 1, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Thomas and Kimberlee Drake for a variance to reduce the 30-foot rear setback to 19 feet for an addition to a single-family detached dwelling located in an R-20 (Residential: Single: Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Drake and Kimberlee Drake testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 14,325-square foot, irregularly shaped property is located on the east side of Fox Tail Lane about 400 feet south of Hunting Horn Drive and is known as 5513 Fox Tail Lane (the

"Property"). The Property lies in the 2nd Election District and is identified on Tax Map 31, Grid 20, as Parcel 774, Lot 51. It is part of the Hunt Country Estates, Section 2 subdivision.

2. The Property's gently curving front (western) lot line appears to be about 75± feet wide. The northern side lot line is about 83 feet deep, the rear (eastern) lot line, about 180 feet, and the southern side lot line is about 195 feet deep.

3. The Property is improved by two-story, single-family frame dwelling sited about 44 feet from the front property line. Attached to the rear, southern half of the dwelling is a 14-foot by 24-foot rear deck. The Property is accessed by a macadam driveway sited near the southern side lot line. A small shed is located behind the house near the rear property line.

4. Vicinal Properties. Adjacent properties are also zoned R-20 and are each improved with a single-family detached dwelling.

5. The Petitioner is requesting a variance from the 30-foot rear setback to about 19 feet for a rear, 16' by 22' addition. Because the setback line runs diagonally, only a portion of the proposed addition would be situated in the setback.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the addition complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, there is no dispute that the lot is irregularly shaped. Consequently, I conclude the Property's shape is a unique physical condition causing the Petitioner practical

difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

1. The proposed addition will be used for a permitted purpose and is a reasonable size.

I conclude the requested variance will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

2. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

3. The addition is a reasonable size and will encroach into the setback in a section only. Within the intent and purpose of the regulations, then, the deck variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

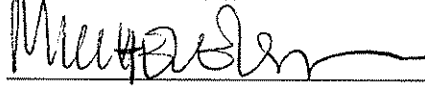
Based upon the foregoing, it is this 15th Day of June 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Thomas and Kimberlee Drake for a variance to reduce the 30-foot building restriction line to 19 feet for an addition in an R-20 Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the addition as described in the petition submitted and not to any activities, uses, structures, or additions on the Property.
2. The Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed:

6/16/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.